Khaled Kamel Khader v KFC (Peninsular Malaysia Sdn Bhd)

HIGH COURT (SHAH ALAM) — SUIT NO 22NCVC-579–10 OF 2017
GUNALAN MUNIANDY J
1 MARCH 2018

Civil Procedure — Transfer of action — High Court to sessions court — Plaintiff sued defendant for negligent — Whether value of subject matter of claim exceeded RM1m — Whether claim within jurisdiction of sessions court — Whether there was element of abuse of court process — Rules of Court 2012 O 92 r 4

This was a claim by the plaintiff against the defendant arising out of the purchase by the plaintiff of a box of fried chicken from the defendant's branch in Sungai Petani, Kedah. The plaintiff alleged that the defendant was negligent in the preparation of the food sold to him. The plaintiff also relied on the doctrine of *res ipsa loquitor* by reference to the facts pleaded. The plaintiff claimed that as a result of the defendant's negligent, the plaintiff suffered various types of medical problems. The plaintiff prayed for general, special and exemplary damages.

Held:

(1) Nowhere was it suggested that the value of the subject-matter of the claim or the amount in dispute exceeded RM1m to bring it beyond the jurisdiction of the sessions court and maintain it in the High Court which should not be burdened with disputes that ought to be rightly heard by the sessions court within their statutory jurisdiction. Based on the reliefs sought, nature and particulars of claim and grounds advanced in the submission of counsel, the present claim was manifestly below RM1m and within the jurisdiction of the sessions court (see paras 10–11).

(2) There was an element of abuse of process of the court by the plaintiff in filing the suit in the High Court on weak and vague grounds when the sessions court, in view of its increased civil jurisdiction, obviously had the competency to try the case. Notwithstanding the plaintiff's motive to set an example against a big corporation purportedly in the public interest, it was an irrelevant factor when the value of the subject matter or amount in dispute was not shown to exceed RM1m (see para 13).

(3) In the circumstances, the court invoked its inherent powers under O 92 r 4 of the Rules of Court 2012 and ordered the transfer of the suit to the

Shah Alam Sessions Court which the court considered necessary to prevent an abuse of court's process (see para 14).

[Bahasa Malaysia summary

Ini adalah tuntutan oleh plaintif terhadap defendan yang timbul daripada pembelian sekotak ayam goreng oleh plaintif daripada cawangan defendan di Sungai Petani, Kedah. Plaintif mengatakan bahawa defendan telah cuai dalam menyediakan makanan yang dijual kepadanya. Plaintif juga bergantung kepada doktrin *res ipsa loquitor* dengan merujuk kepada fakta yang diplikan. Plaintif mendakwa akibat daripada kecuaian defendan, plaintif telah mengalami pelbagai jenis masalah perubatan. Plaintif memohon untuk ganti rugi am, khas dan teladan.

Diputuskan:

(1) Tiada mana-mana yang dicadangkan bahawa nilai hal perkara tuntutan atau jumlah yang dipertikaikan melebihi RM1 juta untuk dimulakan melampai bidang kuasa mahkamah sesyen dan mengekalkannya di Mahkamah Tinggi yang mana tidak patut dibebani dengan pertikaian yang sepatutnya didengar oleh mahkamah sesyen dalam bidang kuasa statutorinya. Berdasarkan relif-relif yang dipohon, sifat dan butiran tuntutan dan alasan yang dikemukakan dalam penghujahan peguam, tuntutan ini adalah kurang daripada RM1 juta dan dalam bidang kuasa mahkamah sesyen (lihat perenggan 10–11).

(2) Terdapat elemen penyalahgunaan proses mahkamah oleh plaintif dalam memfailkan guaman di Mahkamah Tinggi berhubung alasan yang tidak kukuh dan tidak jelas apabila mahkamah sesyen, berdasarkan bidang kuasa sivilnya yang meluas, dengan nyata kompeten untuk mendengar kes itu. Walau apa pun motif plaintif untuk menjadi contoh terhadap perbadanan yang besar bagi maksud demi kepentingan awam, ia adalah faktor tidan relevan apabila nilai hal perkara atau jumlah yang dipertikaikan tidak menunjukkan ia melebihi RM1 juta (lihat perenggan 13).

(3) Dalam keadaan itu, mahkamah menggunakan kuasa sedia adanya di bawah A 92 k 4 Kaedah-Kaedah Mahkamah 2012 dan memerintahkan pemindahan guaman ke Mahkamah Sesyen Shah Alam yang mahkamah anggap perlu untuk mengelakkan penyalahgunaan proses mahkamah (lihat perenggan 14).]

Notes

For a case on from High Court to sessions court, see 2(5) *Mallal's Digest* (5th Ed, 2017 Reissue) para 10863.

Legislation referred to

Rules of Court 2012 O 57 r 1(2), O 92 r 4
Subordinate Courts Act 1948 s 65

Ngoo Chow Ping (The Law Office of Mohanna & Co) for the plaintiff.
Nur Syafikah bt Abul Kamar (Isharidah Ho Chong & Menon) for the defendant.

Gunalan Muniandy J:

[1] This is a claim by the plaintiff ('P'), an individual residing in Batu Caves, Selangor, against the defendant company, popularly known as 'KFC' arising out of the purchase by P of a box of fried chicken from the KFC branch in Sungai Petani, Kedah.

[2] P alleges as follows in his statement of claim ('SOC') at paras 6–7:

> 6. Apabila Plaintif memakan ayam KFC yang terdapat dalam set kotak KFC tersebut, Plaintiff mendapati bahawa terdapat cecair dan/atau bendalir yang keluar daripada ayam KFC tersebut. Plaintif telah memeriksa dengan lebih lanjut dan mendapati bahawa terdapatnya kekotoran pada ayam KFC tersebut. Plaintif telah muntah selepas melihat kekotoran pada ayam KFC tersebut.
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> 7. Plaintif dan isteri Plaintif telah kemudiannya membuat rakaman video sambil memeriksa ayam-ayam KFC yang lain yang berada dalam set kotak KFC tersebut. Melalui pemeriksaan yang lebih mendalam ini, Plaintif, buat pertama kalinya melihat kotoran seperti darah, lemak, organ dan tahi ayam pada ayam-ayam KFC tersebut. Plaintif akan mengemukakan rakaman video tersebut semasa perbicaraan tindakan ini kelak. Plaintif juga akan membekalkan suatu laporan kimia untuk membuktikan keadaan ayam-ayam KFC tersebut, semasa perbicaraan tindakan ini kelak.

[3] P then alleges that KFC was negligent in the preparation of the food sold to him and further relies on the doctrine of *res ipsa loquitor* by reference to the facts pleaded.

[4] P pleads that as a result of KFC's negligence, P suffered various types of medical problems as set out in the SOC, including post traumatic stress disorder, for which a specialist report would be produced at the trial.

[5] By reason of KFCs negligence, material particulars of which are as pleaded, P prays for general, special and exemplary damages. In respect of special and exemplary damages, the claim was, briefly, on the ground that KFC as a company that was a major producer, distributor and retailer of food products sourced from chicken meat throughout the country had failed in its duty to the public to ensure that its products were safe to be consumed by its consumers and instead, put them at risk to their safety and health. Further, that

KFC did not take P's complaint seriously as they only offered as compensation a replacement box of fried chicken for the loss of the product purchased by P. They had, by offering the said compensation through their Sungai Petani branch manager, considered the serious complaint lightly and as a trivial matter. The award of exemplary damages was to act as a deterrent to big corporations, so as not to trivialise genuine complaints based on merit from individuals against their food products that concerned the safety and health of their paying clients.

[6] Whilst I agree that P's complaint is serious and damaging and not at all trivial as it was in the public interest and on grounds of risk to public health for exemplary damages be considered to act as a deterrent, it was manifestly clear that the pleaded claim can be fairly and justly dealt with by the sessions court in view of its increased civil jurisdiction since 2013. From a perusal of the pleadings, assuming that P were to succeed in this suit on the issue of liability, it is most unlikely that P would be awarded total damages exceeding RM1m. Inter alia, P has only made general statements, without reference to material particulars on the medical problems that he experienced in consequence of the incident, in para 10 of the SOC as follows:

> As a result of the abovementioned negligence, Plaintiff had suffered heath problem physically, loss of appetite, insomnia and suffering from Post Traumatic Stress Disorder. A medical expert report from Gleneagles Hospital Kuala Lumpur will be produced at the trial; to prove health suffering by the Plaintiff.

[7] In particular, P has not pleaded whether the said medical problems or conditions resulted in residual or permanent disabilities or whether they were temporary or short term, which is a crucial factor in the award of damages in a claim founded on negligence.

[8] The civil jurisdiction of sessions courts is governed by s 65 of the Subordinate Courts Act 1948 (Revised — 1972) as recently amended. The relevant part of s 65 provides as follows:

> Section 65 Civil jurisdiction of Sessions Courts
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> (1) Subject to the limitations contained in this Act, a Session Court shall have —
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> (a) unlimited jurisdiction to try all actions and suits of a civil nature in respect of motor vehicle accidents, landlord and tenant and distress;
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> (b) jurisdiction to try all other actions and suits of civil nature where the amount in dispute or the value of the subject matter does not exceed one million ringgit; and

A (c) without prejudice to the generality of paragraph (b), jurisdiction to try all actions and suits of a civil nature for the specific performance or rescission of contracts or for cancellation or rectification of instruments, within the jurisdiction of the Sessions Court.

B **[9]** In contending that this claim should be maintained in the High Court, counsel appearing on behalf of P merely submitted these grounds:

> Plaintiff has prayed for exemplary damages under paragraph 11 Award should be in terms of the profit made by the corporate body rather than the damages suffered by the Defendant. Attempt to show example against a corporation.
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> C
>
> Leave it to Court

[10] Nowhere is it suggested that the value of the subject-matter of the claim or the amount in dispute exceeds RM1m to bring it beyond the jurisdiction of D the sessions court and maintain it in the High Court which should not be burdened with disputes that ought to be rightly heard by the sessions courts within their statutory jurisdiction.

E **[11]** From a perusal of the SOC as to the reliefs sought, nature and particulars of claim and grounds advanced in the submission of counsel, this claim is manifestly below RM1m and within the jurisdiction of sessions court.

[12] I am well aware of the express terms of O 57 r 1(2) of the Rules of Court F 2012 ('the ROC') which states that:

> Transfer of Proceedings
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> (2) A transfer of any proceedings from —
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> (a) a Subordinate Court to the High Court; or
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> G (b) the High Court to Subordinate Court,
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> shall only be made by an order of the High Court Judge on application by any party by originating summons or notice of application, whichever is appropriate.

H **[13]** Be that as it may, I was of the view that there was an element of abuse of the process of the court by P in filing this suit in the High Court on weak and vague grounds when the sessions court, in view of its increased civil jurisdiction, obviously had the competency to try the case. Notwithstanding the plaintiff's motive to set an example against a big corporation purportedly in I the public interest, it was an irrelevant factor when the value of the subject-matter or amount in dispute was not shown to exceed RM1m.

[14] In the circumstances, I invoked the inherent powers of the court under O 92 r 4 of the ROC and ordered the transfer of this suit to the Shah Alam

Sessions Court which I considered to be necessary to prevent an abuse of the process of the court.

[15] This suit is transferred to the Shah Alam Session Court.

Order accordingly.

Reported by Dzulqarnain Ab Fatar